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EXAMINER	
AUGUSTIN, EVENS J	

ART UNIT	PAPER NUMBER
3621	

MAIL DATE	DELIVERY MODE
08/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/715,287	HAILPERN ET AL.	
	Examiner	Art Unit	
	Evens Augustin	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-26 are pending. Claims 1-26 have been examined.

Claim Interpretation

2. In determining patentability of an invention over the prior art, the USPTO has considered all claimed limitations, and interpreted as broadly as their terms reasonably allow. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art.

3. It should also be noted that, in the office action that:

   A. Items in the rejection that are in quotation marks are claimed language/limitations.

   B. Passages in prior art references may be mere rephrasing/rewording of claimed limitations, but the implicit/explicit meaning of the references vis-à-vis the claimed limitation remains intact.

   C. Functional recitation(s) using the word "for" or other functional terms have been considered but given less patentable weight[1] because they fail to add any steps and are thereby regarded as intended use language. To be especially clear, the Examiner has considered all claim limitations. However the A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed.

[1] See *e.g. In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight).

Cir. 2001) (Where the language in a method claim states only a purpose and intended result, the expression does not result in a manipulative difference in the steps of the claim.).

D. Word(s) that are separated by "/" are being examined as being synonymous or equivalent.

E. The USPTO interprets the application as an application service provider (ASP), which is a business that provides computer-based services (for a fee) to customers over a network.

F. The USPTO interprets claim limitations that contain statement(s) such as "*if, may, might, can, could, when, potentially, possibly*", as optional language (this list of examples is not intended to be exhaustive). As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted *(In re Johnston*, 77 USPQ2d 1788 (Fed. Circ. 2006)). They will be given less patentable weight, because language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

G. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

H. Any official notices taken by the USPTO that are not adequately traversed by applicant will be taken to be admitted prior art.

I. The USPTO interprets common computer related words that are not lexicographically defined the word in accordance to Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997[2]. The USPTO also uses published patent applications and issued patents as well, for meanings of common computer related words that are not lexicographically defined.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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[2] Based upon Applicants' disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See *e.g. Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as "a technical dictionary" to define the term "flag." See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled 'New Terminology.'

5. Claims 1-15 and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Kouznetsov et al. (U.S 6931546).

6. As per claims1-15 and 24-26, Kouznetsov et al. discloses an invention that ("relates, in general, to application software, and, more particularly, to software, systems and methods for providing application services with controlled access into privileged processes. The invention comprises of the following:

   A. A software-implemented agent 202 executes on the computing devices within the appliance (col. 6, ll. 56-58)– (**"providing a software application on a hardware device by a manufacturer of said software application, wherein said software application is executable on said hardware device"**)

   B. System and method for deployment of applications services via dynamic distribution of software (col. 9, ll. 1-2) - invention takes place in distribute computing environment (col. 5, ll. 16-17) --(**"distributing said hardware device"**)

   C. The invention provides mechanisms and methods for enabling secure remote access to privileged processes on a client computer. While the functionality provided by the instant invention is useful for installation and updating (continued service) of software application code used to provide application services, it is more generally useful in any environment that requires controlled access to privileged processes and features provided by a client computing platform (col. 5, ll. 7-15) - implemented including a variety of internetworking components such as Internet 101, public switched telephone network (PSTN) 102, and a wide area network (WAN) 110 (col. Ll. 27-30) -- (**"providing a continued service for said software application,**

wherein said hardware device is adapted to provide said continued service via a communication link between said hardware device and said manufacturer")

D. Service provided by external Application Service Provider (col. 3, ll. 7-8) -- (**"continued service is performed by a third party service provider"**)

E. Providing controlled access to privileged processes and features (col. 5, ll. 11-15) - One or more of appliances 117 may be configured as an application and/or file server (col. 6, ll. 10-12)--(**"providing said software application in accordance with at least one of a software feature, a hardware configuration and a packaging material"**)

F. Prior art teaches that trusted entities are given privileges that allow "privileged processes" running on their behalf to execution various operations that might otherwise be forbidden by the operating system. Privilege levels are given a variety of names such as " user-level" to designate a most restrictive privilege set and "admin-level" to designate a least restrictive privilege set (col. 3, ll. 36-42) - Providing licensing information to user (col. 10, ll.40)(**"providing said software application in accordance with a service level."**)

G. Charging a fee for software services is well known in the arts (see Cheng et al. US 6151643 col. 7, ll. 27-28 Note: this reference is given to established well known aspect in the art)--(**"providing a fee rate in accordance with a level of end user usage"**)

H. Using a variety of internetworking components such as Internet 101, public switched telephone network (PSTN) 102, and a wide area network (WAN) 110 (col. Ll. 27-30)

("hardware device providing a connection from said at least one end user's computer to said hardware device through at least one of a power line, a local area network, a wireless connection, and a direct connection")

I. Enclosure in necessarily present in a client computer --(" **enclosing said hardware device within an enclosure**")

J. Downloading updated code into memory and/or storage devices within appliance 117 (col. 6, ll. 64-65) --(" **downloading said access software from said software manufacturer or from said hardware device**")

K. A world wide web browser 201 is used to implement network connectivity and to provide a mechanism through which software application functionality can be delivered (col. 6, ll. 66-67, col. 7, ll.1-2) (application has to necessarily be configured to be delivered via the internet) --("**application software for access in conjunction with a web service.** ")

L. A configuration component specifies a list of installable code components that are authorized for installation, wherein the agent will only execute privileged-mode functions in response to accesses by the user-mode code component when the installable code component is represented on the list(col. 4, ll. 47-52) --("**hardware device providing said software manufacturer with limited access to end user information on said hardware device.**")

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kouznetsov et al. (U.S 6931546), in view of Cheng et al. (US 6151643)

9. As per claims 16-23, Kouznetsov et al.'s invention has been previously disclosed.

10. Kouznetsov et al. did not explicitly describe a method/system in which the application was purchased. However, Cheng et al. describes an invention that relates to systems and methods for computer-based customer support, and more particularly, to systems, methods, and products for automatically updating software products from diverse software vendors on a plurality of end -user, client computer systems. According to Cheng et al., the user pays for the services and for any for -fee software updates that the user may access in the course of using the service provided by the service provider computer 102(col. 7, ll. 27-30, col. 17, ll. 6-20).

11. Therefore, it would have been obvious for one skilled to charged client for application services provided. It would obvious for one to do so because it would legitimize the business by providing revenue that could potential sustain the existence of the Application Service Provider.

Conclusion

12. *Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that if the applicant is preparing to respond, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evens Augustin whose telephone number is 571-272-6860. The examiner can normally be reached on Monday thru Friday 8 to 5 pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779.

/Evens J. Augustin/
Evens J. Augustin
August 6, 2007
Art Unit 3621